

# 1999 RHODE ISLAND ACLU CASE DOCKET

Cases Active January-December 1999

\* indicates case opened in 1999; # indicates case closed in 1999

#In re: Advisory Opinion (Ethics Commission – Separation of Powers). FREEDOM OF SPEECH. “Friend of the court” brief arguing that a proposed Ethics Commission rule barring legislators from participating in appointments to state boards exceeds the Ethics Commission’s authority and violates the First Amendment. The R.I. Supreme Court agreed that the Ethics Commission did not have the authority to adopt the ban. Cooperating Attorney: Anthony Cottone

Ahlburn v. Clark. CHURCH-STATE. This suit challenges a state law which provides a sales tax exemption for Bibles but no other literature. The R.I. Supreme Court held the statute unconstitutional; the state is considering a further appeal. Cooperating Attorney: Kevin Brill

\*#In re: Deborah Aiken. DUE PROCESS. Administrative appeal on behalf of an employee denied unemployment benefits due to “misconduct” after failing a drug test performed in violation of state’s drug testing statute. A Board of Review referee ordered that benefits be provided. Cooperating Attorney: Holly Herndon

\*Alexandre v. State of Rhode Island, Division of Public Utilities and Carriers. RIGHT TO TRAVEL. Federal lawsuit challenging the state’s refusal to renew taxicab permits to drivers not residing in Rhode Island. Cooperating Attorney: Amato DeLuca

#In re: Amy L. STUDENTS’ RIGHTS. “Friend of the court” brief filed before the Commissioner of Education on behalf of a high school senior, challenging her exclusion from all school-related activities for a year after she admitted to taking a sip of alcohol at a private home before a school dance. Cooperating Attorney: Amy R. Tabor

\*Ballard v. Chariho School Committee. STUDENTS’ RIGHTS. Administrative appeal challenging a school principal’s unilateral withdrawal of money from the students’ senior class fund to pay for school repairs caused by student vandalism. Cooperating Attorney: Dianne Izzo

#Brocklehurst v. Town of Bristol. FREEDOM OF SPEECH. Federal lawsuit challenging a town loitering ordinance which bans “loafing” and “hanging around.” A settlement decree was entered, in which the Town agreed to repeal the ordinance and pay damages to the plaintiff. Cooperating Attorney: Carolyn Mannis

#Cottone v. Bristol-Warren Regional School Committee. CHURCH-STATE. Federal lawsuit challenging the display of a nativity scene each December on the front lawn of a public elementary school. In settlement of the suit, the Town agreed to have the creche removed to private property and to pay attorneys’ fees. Cooperating Attorney: Sandra Lanni

#Davis v. Woonsocket Housing Authority. RIGHTS OF THE POOR. Federal lawsuit challenging a housing authority’s issuance of “no trespass” orders against two fathers, barring them from visiting their children living in the public housing complex despite the mothers’ consent. A consent decree was entered in which the defendants agreed to halt the practice. Cooperating Attorney: Thomas W. Lyons

#DeAscentis v. Pine. RIGHTS OF VOTERS AND CANDIDATES. Challenge to a state law barring all municipal employees, except teachers, from holding public office in the city or town where they are employed. The state Supreme Court found the challenge moot after the plaintiff lost his election. Cooperating Attorney: Mary E. Levesque

Direct Action for Rights and Equality (DARE) v. Gannon. OPEN RECORDS/POLICE MISCONDUCT. Open records lawsuit against the Providence Police Department for refusing to release records of police brutality

complaints. The state Supreme Court ruled the records were public. The lower court ordered the records to be turned over at no cost and to pay attorneys' fees. A second appeal has been filed by the defendants. Cooperating Attorneys: Michael Sarli, Dennis Grieco II.

\*Doeg v. Ferguson. RIGHTS OF THE POOR. Class-action suit challenging, on due process grounds, the Department of Human Services' procedures in conducting food stamp fraud hearings. A preliminary injunction, preventing the Department from taking action against most class members, has been issued. Cooperating Attorney: Thomas W. Lyons

\*#Edwards v. Clarke. ACCESS TO THE COURTS. Petition filed in the U.S. Supreme Court on behalf of an attorney who was summarily fined by the R.I. Supreme Court, without notice or hearing, for filing a brief with "contemptuous" language. The petition was denied. Cooperating Attorney: Amy R. Tabor

\*Farrell v. Whitehead. RIGHTS OF WHISTLEBLOWERS. "Friend of the court" brief filed in this whistleblower's case on behalf of a local firefighter Union President and two other officers who were ordered to face a disciplinary hearing before the Union's International Board after they filed a state ethics complaint against a former union official. A temporary restraining order was granted. Cooperating Attorney: Christopher P. Corbett

\*#Fernandes v. Immigration and Naturalization Service. RIGHTS OF IMMIGRANTS. Habeas corpus petition challenging the continued detention for more than two years of a legal permanent resident awaiting deportation by the INS. The Court ordered his release. Cooperating Attorney: Randy Olen. ACLU Immigrants' Rights Project Attorney: Judy Rabinovitz

#Folan v. R.I. Department of Children, Youth and Families. EMPLOYMENT DISCRIMINATION. "Friend of the court" brief opposing the state's position that the remedies provided by the Workers Compensation Act supersede those contained in the Fair Employment Practices Act for employers' discrimination-related misconduct. The state Supreme Court issued a favorable ruling. Cooperating Attorney: Robert Savage

#Fuds, Inc. v. State of Rhode Island Commission for Human Rights. DUE PROCESS. "Friend of the court" brief arguing that a Fair Employment Practices Act provision, allowing complainants, but not respondents, to seek jury trials in discrimination cases under the purview of the Human Rights Commission, is unconstitutional. The state Supreme Court agreed. Cooperating Attorney: Christopher Mulhearn

\*Garcia-Nunez v. Reno. RIGHTS OF IMMIGRANTS. Habeas corpus petition filed on behalf of an immigrant facing mandatory deportation for a criminal offense committed before the federal law requiring such deportation was enacted. Cooperating Attorney: Randy Olen

Global Waste Recycling, Inc. v. Mallette. SLAPP SUIT. Defense representation of a couple sued for defamation for statements the couple made to the media expressing environmental concerns about the company's recycling activities. A favorable ruling has been appealed by the company. Cooperating Attorney: Mark W. Freel

#Hermanowski v. Farquharson. RIGHTS OF IMMIGRANTS. "Friend of the court" brief supporting a challenge to the indefinite detention by the INS of a lawful permanent resident awaiting deportation. The Court ruled the detention unconstitutional. ACLU Immigrants' Rights Project Attorneys: Lucas Guttentag, Judy Rabinovitz

\*Heal v. Heal. ACCESS TO THE COURTS. "Friend of the court" brief challenging a Family Court judge's summary imposition of monetary sanctions on an attorney for filing a "frivolous" request for a change in custody on behalf of his client. Cooperating Attorney: Amy R. Tabor

Hometown Properties v. Fleming. SLAPP SUIT. Successful defense representation in R.I. Supreme Court of a SLAPP suit victim who was sued for defamation based on a letter she had sent the Department of Environmental Management raising concerns about a local landfill. An award of attorneys fees is pending. Cooperating Attorney: Amelia Edwards.

#Liu v. Striuli. PRIVACY. “Friend of the court” brief filed on behalf of several organizations in this sexual harassment case, opposing a Magistrate’s ruling that the defendant waived any physician-patient privilege in his psychiatric records by discussing his treatment with the plaintiff. The Court overturned the Magistrate’s ruling. Cooperating Attorney: Betsy Grossman deLeiris

Maynard v. Hibbard. OPEN RECORDS. Open records lawsuit filed against the Town of Charlestown for refusing to make public the billing records from, and payments to, attorneys who represented the Town in a zoning case. The Court dismissed the suit, and an appeal has been filed. Cooperating Attorney: Staci L. Sawyer

#Moryl v. Newport Housing Authority. FREEDOM OF SPEECH. Lawsuit challenging the state labor relations board’s refusal to schedule a union decertification election despite a formal request from a majority of employees to withdraw recognition of their union. The suit was dismissed as moot after an election was finally held and the vote for decertification defeated. Cooperating Attorneys: Thomas Gidley, James Baum

Parker v. School Committee of the Town of Westerly. STUDENTS’ RIGHTS. Administrative challenge to the suspension of a high school student for wearing a rock band T-shirt with the numerals “666” on it, which administrators claimed was “disruptive.” Cooperating Attorney: John Dineen

Pontbriand v. Sundlun. PRIVACY. State lawsuit challenging the Governor’s release to the media of information about depositors with more than \$100,000 in accounts at closed credit unions. The state Supreme Court ordered that a trial be held on the plaintiffs’ privacy claims. Cooperating Attorney: John Glasson.

\*#City of Providence v. Pellegrino. DUE PROCESS. Municipal Court representation of two teenagers charged with violating a city ordinance banning skateboarding almost anywhere in the city. The charges were dismissed. Cooperating Attorney: Gary Berkowitz

#Providence Firefighters Local #799 v. Partington. FREEDOM OF SPEECH. Federal lawsuit challenging a Providence fire department order barring employees from speaking to the media without the fire chief’s approval. The court ruled the policy unconstitutional. Cooperating Attorney: Fidelma Fitzpatrick

\*#Providence Lodge #3, Fraternal Order of Police v. City of Providence. OPEN RECORDS. This lawsuit sought a restraining order against a court order, issued in an ACLU case, requiring police to turn over to a community group the names of officers listed as witnesses in internal police misconduct reports. The request for a restraining order was denied. Cooperating Attorney: Dennis Grieco II

R.I. Association of Realtors v. Pine. FREEDOM OF SPEECH. Federal lawsuit challenging the constitutionality of a state law which bars any use of public records for commercial purposes. A favorable ruling has been appealed by the state. Cooperating Attorney: Mark W. Freel

Rhode Island Medical Society v. Pine. REPRODUCTIVE FREEDOM. Federal lawsuit challenging the constitutionality of a state law banning so-called “partial birth abortions.” A favorable ruling has been appealed by the state. Cooperating Attorney: Lynette Labinger. ACLU Reproductive Freedom Project Attorneys: Catherine Weiss, Talcott Camp, Caitlin Borgmann

Rubano v. DiCenzo. GAY RIGHTS. The ACLU has joined in a “friend of the court” brief in response to certified questions from the Family Court, supporting that court’s jurisdiction under state law to hear a child visitation petition from a former same sex partner of the biological mother. Oral argument has been held.

#Scott v. Town of Bristol. FREEDOM OF SPEECH. Federal lawsuit challenging a town ordinance banning noise which is, among other things, “physically annoying.” A settlement agreement was entered, in which the Town agreed to repeal the ordinance and to pay damages and attorneys fees. Cooperating Attorney: Carolyn Mannis

Solas v. Emergency Hiring Council of the State of Rhode Island. OPEN MEETINGS. Lawsuit challenging the failure of the Governor's Emergency Hiring Council to abide by the Open Meetings Law. A favorable ruling was issued, and a motion for attorneys' fees is pending. Cooperating Attorney: Howard Merten

South County Sand and Gravel, Inc. v. The South Kingstown Neighborhood Congress, Inc. SLAPP SUIT. Defense representation of a community group and its members sued for defamation by a developer for statements made at a Town Council Meeting and in an article in the group's newsletter. A favorable decision has been appealed. Cooperating Attorney: Andrew Prescott

#State v. D'Amario; D'Amario v. Silverman. ACCESS TO THE COURTS. Appeals on behalf of a criminal defendant who, as a condition of probation, was required to dismiss three pending pro se cases he had filed, and barred from appearing pro se in any future cases. The Court ruled that the defendant had waived his right to challenge the probation conditions, but modified the lower court order in some respects to limit its breadth. Cooperating Attorneys: Andrew Horwitz, Daniel Ciora

#State v. Awad. RIGHTS OF IMMIGRANTS. "Friend of the court" brief supporting a criminal defendant's right to withdraw his nolo plea to a misdemeanor offense because he was not informed that such a plea could lead to his deportation. The appeal was dismissed on technical grounds. Cooperating Attorneys: Randy Olen, Susan Mills

#State v. Millette. PRIVACY/FREEDOM OF SPEECH. "Friend of the court" brief supporting suppression of a gun found by police during a car search, which was based in part on the defendant's physical appearance as a "skinhead" and the presence of Nazi literature in the car. The court upheld the search. Cooperating Attorney: Thomas Briody

\*#State v. Rivera. DUE PROCESS. In this case, the Affiliate obtained the return of \$860 seized by the state from the defendant, who had been falsely charged with drug dealing. The state had initially argued that, notwithstanding the false arrest, the money had been lawfully forfeited. Cooperating Attorney: Thomas Mirza

#Taylor v. State of Rhode Island. DUE PROCESS. Federal lawsuit challenging the state's retroactive imposition of a monthly fee on all persons on supervised probation or parole. The court upheld the practice. Cooperating Attorney: Richard Sinapi

\*#Theberge v. Rocco. SEARCH AND SEIZURE. Federal lawsuit challenging police officers' warrantless entry into, and search of, a house in order to arrest a person seen to have engaged in underage drinking. Cooperating Attorney: Merlyn O'Keefe

\*#In re: Wayne A. STUDENTS' RIGHTS. Administrative representation of a middle school student suspended for ten days and threatened with a year's expulsion solely because his name appeared on another student's list of alleged "gang" members. The school rescinded the punishment and expunged all records relating to the suspension. Cooperating Attorney: Maureen Conroy

Westenfelder v. Ferguson. RIGHTS OF THE POOR. Federal lawsuit challenging a state law providing reduced welfare benefits to all residents who have not lived in Rhode Island for the immediately preceding twelve months. A favorable ruling was issued, and a request for attorneys' fees filed. Cooperating Attorney: David Cicilline

\*#Whitehouse v. Moran. RIGHTS OF EMPLOYEES. State court representation of a school teacher who is the subject of a court petition seeking his removal from his local Board of Canvassers based on a state law barring Board members from being employed by any branch of government. Cooperating Attorney: Mary E. Levesque